



4312-52

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

[NPS-ROMO-24625; PPIMROMO6A PPMRSNR1Z.Y00000]

RIN 1024-AE31

Special Regulations, Areas of the National Park System, Rocky Mountain National Park; Bicycling

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service amends the special regulations for Rocky Mountain National Park to allow bicycle use on a 2-mile segment of the East Shore Trail located within the park. A portion of this 2-mile segment will require trail construction to accommodate bicycles and is therefore considered a new trail. National Park Service regulations require promulgation of a special regulation to designate new trails for bicycle use off park roads and outside developed areas.

DATES: This rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Larry Gamble, Chief of Planning and Project Stewardship, Rocky Mountain National Park, 1000 U.S. Highway 36, Estes Park, CO 80517. Phone (970) 586-1320. Email: larry_gamble@nps.gov.

SUPPLEMENTARY INFORMATION:

Background

Rocky Mountain National Park (park) was established in 1915 and is located in north

central Colorado. The approximately 265,761-acre park contains spectacular scenery that includes majestic mountains, lakes, rivers, forests, meadows, and abundant wildlife. The East Shore Trail is a hiking and equestrian trail that runs roughly north/south along the east shore of Shadow Mountain Lake near the town of Grand Lake, Colorado. The entire trail is 6.2 miles long and ends at the southern boundary of the park. The East Shore Trailhead is located south of the town of Grand Lake. The trailhead and the first 0.7 miles of the trail are located on land administered by the U.S. Forest Service as part of the Arapaho National Recreation Area. Bicycle use is currently allowed only on this 0.7-mile section of the trail. The remaining 5.5 miles of the East Shore Trail are located within the park. Hiking and fishing access to the lake is allowed along the trail. This rule applies to the northernmost 2-mile segment of the East Shore Trail within the park extending north from Shadow Mountain Dam to the park boundary. The 2-mile segment of the East Shore Trail corridor within the park is bounded on the west by Shadow Mountain Lake and on the east by designated wilderness.

In January 2014, the National Park Service (NPS) published the East Shore Trail Environmental Assessment (EA). The EA evaluates (i) the suitability of the trail for bicycle use; and (ii) life cycle maintenance costs, safety considerations, methods to prevent or minimize user conflict, and methods to protect natural and cultural resources and mitigate impacts associated with bicycle use on the trail. After a public review period, the Regional Director of the Intermountain Region signed a Finding of No Significant Impact (FONSI) in February 2015 that identified the preferred alternative (Alternative B) in the EA as the selected action.

The EA and FONSI, which contain a full description of the purpose and need for taking action, scoping, the alternatives considered, maps, and the environmental impacts associated with the project, may be viewed on the park's planning website at

<http://parkplanning.nps.gov/romo>, by clicking on the link entitled “East Shore Trail Rulemaking for Bicycle Use” and then clicking on the link entitled “Document List.”

Final Rule

This final rule implements the selected action in the FONSI and authorizes the Superintendent to designate bicycle use on a 2-mile segment of the East Shore Trail within the park. This segment of the trail extends north from Shadow Mountain Dam to the park boundary. To accommodate bicycle use, a 0.25-mile section of the existing trail will be rerouted to improve public safety, to avoid sensitive natural and cultural resources, and to provide for sustainability of the trail. NPS regulations at 36 CFR 4.30 require a rulemaking to implement the selected action because a portion of the rerouted trail will require construction and is located in an undeveloped area. Bicycle use will not be authorized by the Superintendent until the rerouted trail segments are completed. Rerouting is expected to be completed in 2018.

The rule adds a new paragraph (f) to 36 CFR section 7.7– Special Regulations, Areas of the National Park System for Rocky Mountain National Park. The rule requires the Superintendent to notify the public when designating any portion of the trail for bicycle use and to identify the designation on maps available in the office of the Superintendent and other places convenient to the public. The rule authorizes the Superintendent to establish closures, conditions, or restrictions for bicycle use on designated routes after considering public health and safety, natural and cultural resource protection, and other management activities and objectives. Notice of any such closures, conditions, or restrictions must be provided to the public.

Summary of Public Comments

The NPS published the proposed rule in the Federal Register on December 1, 2015 (80 FR 75022). In the same document, the NPS also published notice of a written determination concluding that bicycle use on the 2-mile trail segment is consistent with the protection of the

park area's natural, scenic and aesthetic values, safety considerations and management objectives, and would not disturb wildlife or park resources. The NPS accepted comments on the proposed rule and the written determination through the mail, hand delivery, and through the Federal eRulemaking Portal at <http://www.regulations.gov>. Comments were accepted through February 1, 2016. The NPS received 35 timely comments. A summary of comments and NPS responses is provided below. After considering the public comments and after additional review, the NPS did not make any changes to the rule or the written determination.

1. Comment: One commenter stated that bicycle use on the portion of the East Shore Trail that is part of the Continental Divide National Scenic Trail (CDNST) is inappropriate because such use is inconsistent with the park's general land and resource management plan.

NPS Response: This comment applies to the northernmost 0.9 mile segment of the East Shore Trail that may be designated for bicycle use under this rule. This segment of the trail is part of the CDNST that was established by Congress in the National Parks and Recreation Act, Pub. L. No. 95-625 (1978) (NPRA) in 1978. The NPRA amended the National Trails System Act of 1968, Pub. L. No. 90-543 (1968) (NTSA) which governs the administration of national scenic trails, including the CDNST. The management and use of the CDNST is governed by a Comprehensive Plan that was most recently amended in 2009. Section 5.b.(2) of the Comprehensive Plan allows for bicycle use on the CDNST if the use is consistent with the applicable land and resource management plan and will not substantially interfere with the nature and purposes of the CDNST.

The Rocky Mountain National Park Final Master Plan was adopted in January 1976 and remains the general land and resource management plan for the park. The framework for visitor use in the Master Plan establishes different zones within the park that, by virtue of their ease of

access or facilities, fall into definable patterns of use. Management priorities defer to the basic character of a given zone to provide the visitor use experience for which the zone is most suited. The Master Plan allows for high-density use where necessary, and allows for the maintenance of natural conditions in more primitive portions of the park.

The more primitive portions of the park are those within designated wilderness, which comprises 95 percent of the park. The park's wilderness legislation excluded the East Shore Trail area from designated wilderness. Omnibus Public Land Management Act of 2009, Pub. L. No. 111-11. The East Shore Trail is located within the 5 percent of the park that – according to the Master Plan – could accommodate high-density use where appropriate. Although the trail is located outside designated wilderness, the EA and FONSI do not propose significant modifications to the East Shore Trail to accommodate high-density use, but instead propose modest improvements to accommodate low-density use, including bicycle use, on a single track trail. For these reasons, the NPS believes the decision to allow bicycle use on the segment of the East Shore Trail identified in the EA is consistent with the park's Master Plan.

The NPS also believes that bicycle use is consistent with Congressional intent for management of the East Shore Trail area. The NTSA – which governs the administration of the national trails system – lists “trail biking” as a potential use of national scenic trails. 16 U.S.C. 1246(j). The NTSA states that “other uses” of the trail system – in addition to campsites, shelters, and related public use facilities – should be permitted if they do not substantially interfere with the purposes of the trail. The NTSA also states that reasonable efforts should be made to provide sufficient access opportunities to the CDNST and, to the extent practicable, avoid activities incompatible for the purposes for which such trails were established. 16 U.S.C. 1246(c).

The Omnibus Public Land Management Act of 2009 directed the Secretary of the Interior, acting through the NPS, to establish a route for the East Shore Trail to maximize the opportunity for sustained use of the trail without causing harm to affected resources or conflicts among users. Pub. L. No. 111-11, sec. 1954(a) (2009). Congress excluded the trail from designated wilderness and explicitly stated that the Secretary may allow nonmotorized bicycles on the trail. Pub. L. No. 111-11, sec. 1954 (e)(3) (2009).

2. Comment: One commenter stated that bicycle use on the portion of the East Shore Trail that is part of the CDNST is inappropriate because such use will substantially interfere with the nature and purposes of the CDNST, which are to (i) provide high-quality scenic, primitive hiking and horseback riding opportunities and (ii) conserve natural, historic, and cultural resources. Other commenters had similar concerns for the entire 2-mile segment of the East Shore Trail. These commenters were concerned that allowing bicycle use would conflict with hikers and equestrians by creating an unsafe environment. Other commenters stated that bicycles would adversely impact natural resources by disturbing wildlife and eroding soil.

NPS Response: The NPS believes that allowing bicycle use on the 2-mile segment of the East Shore Trail identified in the EA and FONSI is compatible with and will not substantially interfere with opportunities for high-quality scenic, primitive hiking and horseback riding. As long as the trail is not closed for management purposes (e.g., hazard tree removal), hikers and equestrians are free to use the trail every day of the year. The NPS expects that many interactions between hikers, equestrians, and bicyclists will not result in a conflict. To the extent the NPS receives evidence of conflicts between bicyclists and other user groups, the NPS will implement the adaptive management strategy identified in the FONSI to reduce the frequency and magnitude of those conflicts. The most restrictive management action that may be taken to

address visitor conflicts is to close the trail to bicycles. An intermediate step is to close the trails to bicycles every other day, which would provide hikers and equestrians an opportunity to use the trail without the potential for interaction with bicycles. If alternate bike days are implemented, it will be because of documented and verifiable conflicts or accidents involving bicyclists. If this occurs, it does not mean there has been substantial interference with the purposes of the CDNST. The adaptive management strategy in the FONSI is designed with low thresholds that trigger management actions in order to mitigate conflict. The number and severity of incidents that would trigger the NPS to adopt alternate bike days fall below the threshold of substantial interference with the provision of high-quality scenic, primitive hiking and horseback riding opportunities on the CDNST. Whatever impacts there may be on these opportunities, the impacts will only apply to a 0.9-mile segment of the CDNST where bicycle use is allowed within the park. This represents only 6 percent of the length of the CDNST in the park and 0.03 percent of the total length of the CDNST.

The NPS also believes that allowing bicycles on the 0.9-mile segment of the East Shore Trail that is also part of the CDNST is compatible with and will not substantially interfere with the conservation of natural, historic, and cultural resources along the CDNST corridor. The FONSI determined that the construction of the trail and bicycle use on the trail would not have a significant effect on the human environment. The EA and FONSI evaluated potential impacts to natural resources such as soils and wildlife, and cultural resources such as archeological sites and historic structures. The FONSI identified mitigation strategies that will be implemented to protect natural and cultural resources (pages 3-4). The FONSI identifies an adaptive management strategy to address resource damage from bicycles (page 5). Indicators such as loss of trail tread and expansion of off-trail resource damage will be met with trail armoring, increased trail

maintenance, reevaluation of trail design, and – as the most restrictive measure – elimination of bicycle use on the trail.

3. *Comment:* One commenter stated that the NPS should not allow bicycle use on the East Shore Trail until the CDNST Interagency Leadership Council establishes a carrying capacity that is required by the NTSA and the Comprehensive Plan.

NPS Response: The CDNST crosses Federal lands administered by the U.S. Forest Service under the U.S. Department of Agriculture and the NPS and Bureau of Land Management under the U.S. Department of the Interior. Programs specific to the CDNST are developed and coordinated through the CDNST Interagency Leadership Council, consisting of Regional Foresters for the Forest Service, State Directors for the Bureau of Land Management, and a Regional Director for the NPS. The Council provides leadership and oversight to sustain the CDNST and ensures consistent, coordinated, and effective programs.

The NTSA states that the Comprehensive Plan for the CDNST will identify a carrying capacity for the trail and a plan for its implementation. 16 U.S.C. 1244(f). The Comprehensive Plan states that the policy of the Council is to establish a carrying capacity for the CDNST that accommodates its nature and purposes. The Comprehensive Plan states that NPS managers will utilize existing capacity estimates developed for general park or resource management plans. The Council has not yet established a carrying capacity for the CDNST and the NPS has not established a carrying capacity for the East Shore Trail in the park's Master Plan. Although there is no carrying capacity to guide management of the trail, the NPS believes it has complied with the management direction in the Comprehensive Plan that the carrying capacity determination will consider biophysical environmental needs and the social capacity factors needed to provide desired recreation experience opportunities. The EA and the FONSI evaluated the impacts of

bicycle use on the natural environment and on the visitor experience on the trail. The adaptive management indicators, thresholds, and management actions that are a part of the decision to allow bicycles on a 2-mile section of the East Shore Trail are designed to avoid resource damage and conflicts among bicyclists and other park visitors.

4. Comment: One commenter stated that prior to considering actions that may degrade the CDNST corridor, the NPS must develop and implement a General Management Plan (GMP) that recognizes the CDNST as a Congressionally-designated area. This commenter further stated that the GMP must comply with the NTSA and the Comprehensive Plan for the CDNST, and that once programmatic direction is established in the GMP, CDNST site-specific protection and development plans should be established that provide for the values of the CDNST.

NPS Response: NPS is required by law to prepare a GMP for the preservation and use of each National Park System unit that includes (1) measures for the preservation of the area's resources; (2) indications of types and general intensities of development (including visitor circulation and transportation patterns, systems, and modes) associated with public enjoyment and use of the area, including general locations, timing of implementation, and anticipated costs; (3) identification of and implementation of commitments for visitor carrying capacities for all areas of the System unit; and (4) indications of potential modifications to the external boundaries of the System unit, and the reasons for the modifications. 54 U.S.C. 100502.

The park's Master Plan was adopted in January 1976 and serves as the GMP for the park. At this time, the Secretary of the Interior has not listed the park as needing a revised Master Plan. In May 2013, the NPS published a Foundation Document for the park which includes information on park purpose, significance, interpretive themes, and fundamental resources and values. One of the identified planning needs in the Foundation Document is a visitor use

management plan that would address capacities of several areas of the park and determine where use should be limited, where it could be expanded, and strategies for managing use. The areas contemplated for a visitor use management plan could include high use areas like the Bear Lake Road corridor and the Alpine Visitor Center, which host hundreds of thousands of visitors each year. The plan will be developed over the course of the next few years and will be done through an open public process. It is unlikely that the proposed visitor use management plan would include areas of the park with relatively low visitation such as the East Shore Trail.

5. Comment: Several commenters stated that the East Shore Trail is incompatible with mountain biking, especially during the summertime when the trail is most popular with hikers. These commenters felt that bicycling on the East Shore Trail would disrupt the serene and quiet environment along the edge of the lake.

NPS Response: The NPS installed a trail counter on the East Shore Trail in 2013. The average daily use during the summer season (July through September) was 18 people. Saturdays were the busiest days on the East Shore Trail, with an average of 43 visitors each Saturday during the summer season. This is light trail use when compared to many other trails in the park. For example, the nearby East Inlet Trail averaged more than 550 visitors per day in 2003 when trail counters were last deployed at that location. This documented level of use suggests that bicyclists and hikers will be able to share the trail during the summer. The NPS will mitigate conflicts that arise through implementation of the adaptive management strategy. The East Shore Trail is located outside designated wilderness and lies adjacent to Shadow Mountain Lake where motorized use (motorboats and jet skis) are permitted. Noise generated by bicycles and bicyclists would not be substantially greater than that produced by hikers, and would be less than existing noise from motorized vessels on the nearby lake.

6. *Comment:* Several commenters stated that the East Shore Trail should be used only by hikers because flat hiking trails that serve people of all ages, especially older hikers, are rare. These commenters stated that it is important to maintain a balance for outdoor activities so that visitors of all skill levels can enjoy the park. These commenters stated that bicyclists have many other trails they can use outside the park.

NPS Response: There are many hiking trails on the west side of the park with grades and levels of difficulty that are similar to the East Shore Trail. Examples include the North Inlet Trail, East Inlet Trail, Kawuneeche Valley Trail, Colorado River Trail, and the Coyote Valley accessible trail. The East Shore Trail has been open to hiking, cross-country skiing, snowshoeing and equestrians since it was established after completion of the Shadow Mountain Reservoir. In 2009, Congress directed the Secretary of the Interior, acting through the NPS, to consider the use of bicycles use on the East Shore Trail. The NPS evaluated this use through a public planning process that resulted in the EA and FONSI. At the conclusion of that process, the NPS determined that bicycle use on the East Shore Trail is appropriate, and with carefully designed adaptive management measures could be sustained without causing unacceptable impacts. Mountain bike use on the East Shore Trail is a privilege and not a right. If unacceptable impacts occur from bicycle use, the NPS will follow the adaptive management strategy to mitigate those impacts with actions such as trail armoring and trail redesign.

7. *Comment:* One commenter cited a study finding that elk and deer exhibit higher probabilities of flight response during ATV and mountain bike activity, in contrast to lower probabilities observed during hiking and horseback riding.

NPS Response: Based on information provided by Colorado Parks and Wildlife (CPW), the NPS erroneously stated in the EA that bicycles moving through the area would have less

impact on wildlife than hikers or equestrians because they would be in the area for a shorter period of time. The NPS agrees with the commenter that less time does not equate to less disturbance to wildlife. Bicycle use on the East Shore Trail would cause wildlife displacement, but is not expected to rise to the level of harming wildlife. Congress directed the NPS to maximize the opportunity for sustained use of the trail without causing harm to affected resources.

8. Comment: Several commenters asked how the NPS will pay for trail maintenance and repair, and how it will monitor trail activity in a manner that allows it to implement the adaptive management strategy.

NPS Response: The FONSI commits the NPS to increase law enforcement patrols to two times per week if there are five or more unique verifiable verbal or written complaints about conflicts with bicyclists from May through September in any year. The Headwaters Trails Alliance (HTA) will assist the NPS with keeping bicyclists informed about trail restrictions. Bike use on the trail will be a privilege and not a right. It is in the best interest of the bicycle riders to observe the rules put in place by the NPS to avoid restrictive management actions such as alternate bicycle days and completely closing the trail to bicycles.

The FONSI also commits the NPS to monitor the condition of the trail in accordance with an adaptive management strategy. Indicators such as loss of trail tread and expansion of off-trail resource damage will be met with management actions such as trail armoring and new trail design and edging. The HTA will provide funding to modify the trail to accommodate bike use in accordance with NPS trail standards. The HTA will also provide funding for trail maintenance that exceeds what the NPS would normally do for hiking and equestrian trails.

Compliance with Other Laws, Executive Orders and Department Policy

Regulatory Planning and Review (Executive Orders 12866 and 13563).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Reducing Regulation and Controlling Regulatory Costs (Executive Order 13771)

This final rule is considered an EO 13771 deregulatory action because it is an enabling regulation.

Regulatory Flexibility Act

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the economic analyses found in the report entitled “Benefit-Cost and Regulatory Flexibility Analyses: East Shore Trail at Rocky Mountain National Park” which is available online at <http://parkplanning.nps.gov/romo> by clicking on the link entitled “East Shore Trail Rulemaking for Bicycle Use” and then clicking on the link entitled “Document List.”

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- (a) Does not have an annual effect on the economy of \$100 million or more.
- (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.
- (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630)

This rule does not effect a taking of private property or otherwise have takings implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in section 1 of Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. This rule only affects use of federally-administered lands and waters. It has no outside effects on other areas. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988)

This rule complies with the requirements of Executive Order 12988. This rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian tribes (Executive Order 13175 and Department Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes. Nevertheless, the NPS mailed a letter on April 18, 2013 inviting input specifically from affiliated Native American tribes and offering to arrange a site visit. No response was received.

Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act is not required. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

The NPS prepared the EA to determine whether this rule will have a significant impact on the quality of the human environment under the National Environmental Policy Act of 1969.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act is not required because of the FONSI. A copy of the EA and FONSI can be found online at <http://parkplanning.nps.gov/romo> by clicking on the link entitled “East Shore Trail Rulemaking for Bicycle Use” and then clicking on the link entitled “Document List.”

Effects on the Energy Supply (Executive Order 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Drafting Information

The primary authors of this regulation are Larry Gamble of Rocky Mountain National Park and Jay Calhoun, Regulations Program Specialist, National Park Service.

List of Subjects in 36 CFR Part 7

National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service amends 36 CFR part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for part 7 continues to read as follows:

Authority: 54 U.S.C. 100101, 100751, 320102; Sec. 7.96 also issued under D.C. Code 10-137 and D.C. Code 50-2201.07.

2. Add paragraph (f) to § 7.7 to read as follows:

§7.7 Rocky Mountain National Park.

* * * * *

(f) *Bicycle use on the East Shore Trail.* The Superintendent may designate all or portions

of a 2-mile segment of the East Shore Trail, extending north from Shadow Mountain Dam to the park boundary, as open to bicycle use. A map showing portions of the East Shore Trail open to bicycle use will be available at park visitor centers and posted on the park website. The Superintendent will provide notice of all bicycle route designations in accordance with § 1.7 of this chapter. The Superintendent may limit, restrict, or impose conditions on bicycle use, or close any trail to bicycle use, or terminate such conditions, closures, limits, or restrictions in accordance with § 4.30 of this chapter.

Jason Larrabee

Principal Deputy Assistant Secretary
for Fish and Wildlife and Parks

Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks

[FR Doc. 2018-04309 Filed: 3/1/2018 8:45 am; Publication Date: 3/2/2018]